

## Tax Residency blog April 2014

A new Interpretation Statement has been issued by IRD with effect from 1 April 2014.

Under the Income Tax Act 2007, *residence* is relevant for determining whether a person is assessable for tax on worldwide income or only on New Zealand-sourced income.

Essentially there are 2 tests

1. An individual is a New Zealand resident if they are personally present in New Zealand for more than 183 days in total in a 12-month period. The person will then be treated as resident from the first of those 183 days.
2. A person is also resident if they have a permanent place of abode in New Zealand, even if they also have a permanent place of abode elsewhere.

A person who is resident by virtue **only** of the 183 day rule will stop being a New Zealand resident if they are personally absent from New Zealand for more than 325 days in total in a 12-month period ("the 325-day rule").

There are increasing numbers of individuals who do not appear to have one place of abode or who even have multiple such places and where (or if) they should pay tax is equally hard to determine

### Permanent Place of Abode

This is the overriding residence rule for individuals. This means that a person who is absent from New Zealand for more than 325 days in a 12-month period will remain a New Zealand resident if they continue to have a permanent place of abode in New Zealand. Equally, a person who is present in New Zealand for less than 183 days in a 12-month period is still a New Zealand resident if they have a permanent place of abode in New Zealand. A person who is absent for more than 325 days in a 12-month period, but who has a permanent place of abode in New Zealand at any time during that period, cannot cease to be resident any earlier than the day they lose their permanent place of abode in New Zealand.

The permanent place of abode test is most relevant to people leaving New Zealand. People moving to New Zealand will typically be resident under the 183-day rule and will not need to consider the permanent place of abode test. However in situations where someone moves between New Zealand and another country or countries, New Zealand residence could be triggered under either test. Also, someone moving to New Zealand could potentially establish a permanent place of abode prior to the first day of their presence under the 183-day rule.

The term '*permanent place of abode*' is not defined in the tax legislation.

It has generally been interpreted by the courts as meaning a dwelling. It does not however exclude a person having more than one place of abode in say 2 different countries. The important point is that there is one in New Zealand.

But don't be fooled! A recent TRA decision held that a New Zealander who qualified being non resident under the 183 day test nevertheless had a permanent place of abode in New Zealand despite being absent from New Zealand since he left the country to work overseas in 2003. The facts in this case were perhaps a little unusual. The taxpayer had separated from his wife and some years before he left NZ to work abroad (primarily in hot spots in the Middle East). He had no intention of returning to live in NZ.

However he paid regular financial support to his ex-wife, visited with and financially supported his children. He also bought his ex wife's share in a property they had previously owned together. Although he owned residential property in New Zealand it was rented out and he did not stay in such property when he visited New Zealand from time to time. Furthermore – he had no intention of returning to New Zealand once he finished work, rather his intention was to reside in Australia.

While there were some factors supporting the taxpayer's position, looking at the circumstances overall, the taxpayer continued to have a strong and enduring relationship with New Zealand in the relevant tax years. He continued to have an available dwelling to return to and maintained close family and financial ties to New Zealand.

The length of time which the taxpayer spent out of New Zealand favoured the taxpayer's position that he did intend to leave New Zealand permanently in 2003, but it was not determinative.

A New Zealand resident is liable for tax on all assessable income, whether derived from New Zealand or overseas. A non-resident is liable for New Zealand income tax only on income that is derived from New Zealand. The effect of these two qualifications is that only New Zealand residents and New Zealand-sourced income are liable for New Zealand income tax.

New Zealand has entered into tax agreements with many countries known as “Double Tax Agreements”. These agreements, among other things ensure that income is only taxed once.

It is increasingly common for individuals to receive income from multiple sources and have multiple places they may call ‘home’.

The tests for tax residency are by their nature complex and one size does not fit all.

*Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.*

#### **About the author**

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